Pushpah a/p MSS Rajoo v Malaysian Co-operative Insurance Society Ltd & Anor

HIGH COURT (SHAH ALAM) — ORIGINATING SUMMONS NO 24-352 OF 1993
KC VOHRAH J
10 JULY 1995

Unincorporated Associations *— Societies — Co-operative society — Member took life insurance policy from society — Member nominated father as beneficiary — No renomination of spouse as beneficiary upon member's marriage — Death of member in 1992 — Whether member's marriage had revoked earlier nomination — Co-operative Societies Act 1948 s 17*

Civil Law Act *— English law — Applicability of English statutory provisions — English Friendly Societies Act 1974 s 66 substantially similar to Co-operative Societies Act 1948 s 17 — No provision in s 17 for automatic revocation of named beneficiary upon member's marriage — Whether lacuna in Malaysian law — Whether English Act applicable — Civil Law Act 1956 s 3 — Co-operative Societies Act 1948 s 17*

The plaintiff's husband ('the deceased'), who was a registered member of the Malaysian Co-operative Insurance Society Ltd ('the first defendant'), took a life insurance policy from it in 1986. The deceased nominated his father ('the second defendant') to be the sole beneficiary of the policy. In 1989, the deceased married the plaintiff, but he did not revoke the nomination that had already been made. The deceased died in 1992. The plaintiff had applied to the High Court, inter alia, for a declaration that the nomination made in favour of the second defendant was void, and for an order that the first defendant should pay the proceeds of the policy to her under s 17 of the Co-operative Societies Act 1948 ('Act 287'). The grounds of the application were that: (i) the word used in s 17 was 'may', which implied that it was not necessary for the first defendant to pay to the person nominated, but they should consider the nomination had been revoked by the deceased's marriage; and (ii) unlike s 66 of the English Friendly Societies Act 1974, which was substantially similar to s 17 of Act 287, Malaysian law has not provided for the automatic revocation of a nomination when the nominator marries; hence a lacuna exists and it follows that s 66 should be adopted by virtue of s 3 of the Civil Law Act 1956. The sole issue to be considered by the court was whether the marriage of the deceased had revoked the nomination made by the deceased earlier under the relevant laws.

Held, dismissing the application:

(1) As Act 287 applies to West Malaysia only, by virtue of s 3(1)(a) of the Civil Law Act 1956, the court would only have to consider the applicability of the common law of England and the rules of equity but not statutory provisions.

(2) If a subject matter has been dealt with by any written law in Malaysia, there will be no question of applying English common

law or the rules of equity in respect of the same subject matter. At the time of the deceased's death, the nomination by a co-operative society's member of a person who would receive his interest with the society on his death, and transfer of such interest by the society to the nominated person, were governed by r 18 of the Co-operative Societies Rules 1949 ('the Rules'), and s 17 of Act 287, respectively. As such, the English common law or rules of equity did not apply.

(3) It was clear that the first defendant had no discretion but to transfer the interest of the deceased member to the second defendant, as nomination was done in accordance with r 18, and no revocation had ever been effected by the deceased. Further, there was no ambiguity in the language of s 17 of Act 287.

(4) Although the plaintiff may be unjustly deprived of the deceased's interest with the first defendant, it was for Parliament to change the law if it deems the circumstances justify such change.

(5) In this case, the deceased died in 1992, and the Co-operative Societies Act 1993 which repealed Act 287 came into force only on 22 January 1994. Therefore, s 17 of Act 287 would be the applicable provision.

[Bahasa Malaysia summary

Suami plaintif ('si mati'), yang merupakan ahli berdaftar Malaysian Co-operative Insurance Society Ltd ('defendan pertama'), telah mengambil suatu polisi insurans nyawa daripadanya pada tahun 1986. Si mati menamakan ayahnya ('defendan kedua') sebagai benefisiari tunggal polisi tersebut. Pada tahun 1989, si mati berkahwin dengan plaintif, tetapi beliau tidak membatalkan penamaan yang telahpun dibuat olehnya. Si mati meninggal dunia pada tahun 1992. Plaintif telah memohon kepada Mahkamah Tinggi, antara lain, untuk satu pengisytiharan bahawa penamaan yang memanfaatkan defendan kedua tersebut adalah tidak sah, dan suatu perintah bahawa defendan kedua seharusnya membayar hasil daripada polisi itu kepadanya di bawah s 17 Akta Koperasi 1948 ('Akta 287'). Alasan permohonan yang dikemukakan ialah bahawa: (i) perkataan yang digunakan oleh s 17 ialah 'boleh', yang secara tersirat menyatakan bahawa defendan pertama tidak perlu membayar kepada orang yang telah dinamakan, sebaliknya, ia harus menganggap bahawa penamaan tersebut telahpun ditarik balik akibat perkahwinan si mati; dan (ii) berbeza dengan s 66 Friendly Societies Act 1974 di England, yang sebahagian besarnya sama dengan s 17 Akta 287, undang-undang Malaysia tidak memperuntukkan pembatalan penamaan secara automatik apabila orang yang membuat penamaan itu berkahwin; lantaran itu, suatu lakuna wujud dan akibatnya, s 66 patut diterima mengikut s 3 Akta Undang-Undang Sivil 1956. Isu tunggal yang harus dipertimbangkan oleh mahkamah ialah; sama ada perkahwinan si mati telah membatalkan penamaan yang telah dibuat oleh si mati dahulu di bawah undang-undang yang berkenaan.

Diputuskan, menolak permohonan itu:

(1) Oleh kerana Akta 287 adalah terpakai di Malaysia Barat sahaja, menurut s 3(1)(a) Akta Undang-Undang Sivil 1956, mahkamah hanya perlu mempertimbangkan sama ada common law England dan rukun ekuiti adalah terpakai tetapi bukan peruntukan statut.

(2) Jika sesuatu perkara telahpun diatasi oleh sebarang undang-undang bertulis di Malaysia, soalan mengenai pemakaian common law di England ataupun rukun ekuiti mengenai perkara yang sama tidak timbul lagi. Apabila si mati meninggal dunia, penamaan yang dilakukan oleh ahli koperasi mengenai orang yang akan menerima kepentingannya di dalam koperasi tersebut atas kematiannya, dan pemindahan kepentingan tersebut oleh koperasi itu, adalah dikuasai oleh peraturan 18 Peraturan-Peraturan Koperasi 1949 ('Peraturan itu'), dan s 17 Akta 287, masing-masing. Oleh yang demikian, common law di England dan rukun ekuiti tidak terpakai.

(3) Adalah jelas bahawa defendant pertama tidak mempunyai budi bicara, tetapi mesti memindahkan kepentingan si mati kepada defendan kedua kerana penamaan telah dilakukan menurut peraturan 18, dan pembatalan penamaan tersebut tidak pernah dilakukan oleh si mati. Lagipun, tidak terdapat ketaksaan dalam bahasa s 17 Akta 287.

(4) Walaupun plaintif mungkin kehilangan kepentingan si mati di dalam defendan pertama secara tidak adil, Parlimenlah yang bertanggungjawab untuk mengubah undang-undang jika ia berasa keadaan tersebut mewajarkannya untuk berbuat demikian.

(5) Dalam kes ini, si mati meninggal dunia pada tahun 1992, dan Akta Koperasi 1993 yang telah memansuhkan Akta 287 hanya mula berkuatkuasa pada 22 Januari 1994. Maka, peruntukan yang terpakai adalah s 17 Akta 287.]

[*Editorial Note*: The plaintiff has applied for leave to appeal to the Court of Appeal.]

Notes

For a case on passing of a share or interest of a deceased member in a co-operative society, see 12 *Mallal's Digest* (4th Ed) para 1176.

For cases on the application of s 3 of the Civil Law Act 1956, see 1 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 2186–2187.

Legislation referred to

Civil Law Act 1956 s 3
Co-operative Societies Act 1948 ss 1(2), 17
Co-operative Societies Act 1993 s 24
Insurance Act 1963
Co-operative Societies Rules 1949 r 18
Friendly Societies Act 1974 s 66(1), (6), (7) [Eng]

Dennis Appaduray (*Gurmit Singh* with him) (*Sidek Teoh Wong & Dennis*) for the plaintiff. A

B Balakumar (*Azim, Ong & Krishnan*) for the first defendant.

K Pushpalingam (*Pushpalingam-SY Yoong & Associates*) for the second defendant.

B

KC Vohrah J: Ravithiran a/l Suppiah @ Kalisamy ('the deceased') took out a policy of insurance on his life from the Malaysian Co-operative Insurance Society Ltd ('the first defendant') in 1986. He was a bachelor then and on 31 March 1986, he nominated his father ('the second defendant') to be the sole beneficiary of the proceeds under the policy in the event of his death. About three years later, on 18 March 1989, the C deceased married the plaintiff. The deceased did not revoke or vary the nomination made by him of his father as the sole beneficiary of the proceeds. On 25 September 1992, the deceased died as a result of a motor accident.

The widow of the deceased has applied to the court for a declaration D that the nomination made by the deceased in favour of the second defendant is void, and for an order that the proceeds of the said policy of insurance taken out by her late husband be paid to her, and that the costs of the application be paid by the second defendant.

The sole issue is whether the marriage of the deceased to the plaintiff E revoked the nomination made by the deceased in favour of the second defendant under the relevant laws.

The first defendant is a co-operative society which was registered under the Co-operative Societies Act 1948 ('Act 287') and is now deemed to be registered under the Co-operative Societies Act 1993 ('Act 502') F which came into force on 22 January 1994. The first defendant undertakes insurance business and its insurance business is governed by the Insurance Act 1963.

The deceased was a member of the first defendant, a registered society. When he nominated his father to be the sole beneficiary of the G proceeds under the policy in the event of his death, he did so by virtue of r 18 of the Co-operative Societies Rules 1949 which reads:

> Any member of a registered society may in writing ... nominate any person or persons to whom his share or interest or the value of such share or interest and all other monies referred to in section 17 of the Ordinance that H may be due to him may, on the death of such member, be paid or transferred under the provision of the said section, and may in similar manner from time to time revoke or vary such nomination.

The s 17 referred to in the rule is a reference to s 17 of the repealed Act, Act 287. The equivalent provision, s 24 in the extant Act (Act 502), in so far as it relates to a deceased member who is not a Muslim is substantially I similar to s 17 of the repealed Act, save that the subscription of a deceased member mentioned in the said s 17 is not referred to in the present provision. For our purposes, however, s 17 of the repealed Act is the relevant provision as it relates to rights which accrued on the death of a

A member while Act 287 was the governing law. In our case, the member died in September 1992, while Act 502 which repealed Act 287 came into force only on 22 January 1994.

Section 17 of Act 287 reads:

> On the death of a member, a registered society may transfer the share or
> B subscription or interest of the deceased member to the person nominated in accordance with the rules made in this behalf, or, if there is no person so nominated, to such person as may appear to the Board to be the heir or legal representative of the deceased member, or may pay to such nominee, heir or legal representative, as the case may be, a sum representing the value of such member's share or subscription or interest, as ascertained in accordance
> C with the rules or by-laws: ...

Encik Dennis Appaduray for the plaintiff argues that it is not necessary for the first defendant to pay out the proceeds to the person nominated by the deceased as the word used is not 'shall' but 'may', and the word 'may' implies that the Board (the governing body of the first defendant) need not
D pay to the person nominated, and may take into account that the deceased had married since the date of nomination and that the marriage operated to revoke the nomination. He relies on s 66 (7) of the English Friendly Societies Act 1974 which is reproduced below together, for completeness, with s 66 (1) and (6) :

> E (1) Subject to the following provisions of this section, a member of a registered society or of a branch thereof who is not under the age of sixteen years may, by writing ... nominate a person or persons to whom any sum of money payable by the society or branch on the death of that member or any specified amount of money so payable shall be paid at his decease.
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> F ...
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> (6) A nomination so made may be revoked or varied by any similar document under the hand of the nominator so delivered, sent or made as mentioned in subsection (1) above.
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> (7) The marriage of a member of the society or branch shall operate as a revocation of any nomination previously made by that member under
> G this section.

What is to be noted is that s 66(1) and (6) of the English Act are substantially similar to s 17 of our Act 287. However, Encik Appaduray seems to think that there is a lacuna in the Malaysian law in that the Malaysian legislation has not provided for the automatic revocation of a
H nomination when the nominator marries, unlike s 66(7) of the English legislation, and he adverts to s 3 of the Civil Law Act 1956 to say that the English legislative provision, ie s 66(7) of the Friendly Societies Act 1974, should be adopted.

Let me turn to s 3(1) of the Civil Law Act 1956. It reads as follows:

> I (1) Save so far as other provision has been made or may hereafter be made by any written law in force in Malaysia, the Court shall —
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> (a) in West Malaysia or any part thereof, apply the common law of England and the rules of equity as administered in England on the 7th day of April, 1956.

(b) in Sabah, apply the common law of England and the rules of equity, together with statutes of general application, as administered or in force in England on the 1st day of December, 1951; A

(c) in Sarawak, apply the common law of England and the rules of equity, together with statutes of general application, as administered or in force in England on the 12th day of December, 1949, subject however to subsection (3)(ii): B

Provided always that the said common law, rules of equity and statutes of general application shall be applied so far only as the circumstances of the States of Malaysia and their respective inhabitants permit and subject to such qualifications as local cirucmstances render necessary.

It will be noticed that the provision that has to be considered is s 3(1)(a) C which relates only to West Malaysia, as the 1948 legislation relating to Act 287 is one 'which applies to West Malaysia only' (see s 1(2) of Act 287). What that means is that I have to consider the applicability of the 'common law of England and the rules of equity', and not the additional item 'statutes of general application' (which is included for Sabah and Sarawak). Having said that, it is quite clear, however, that at the time of D the death of the plaintiff's husband who was a member of the society, there was written law dealing with the nomination of a person by a member of a co-operative society to receive the member's share or interest with the society on the member's death (r 18 of the Co-operative Societies Rules 1949) as there was written law dealing with the transfer of such share or E interest by the board of the society on the death of the member to either the nominated person, heir or legal representative of the deceased member (s 17 of Act 287). Provision having been made by written law, there is no question of applying English common law or the rules of equity in respect of the subject matter and in any event the provision sought to be brought in is a statutory provision. F

I cannot see any ambiquity in the language of s 17 of Act 287. Since the deceased member had nominated the second defendant in accordance with r 18 of the Co-operative Societies Rules 1949, and he did not vary or revoke the nomination before his death, the co-operative society, the first defendant, has no discretion but to transfer the 'share or subscription or G interest of the deceased member' to the nominee, the second defendant.

The court is aware that as the law stands (whether under s 17 of Act 287 or s 24 of Act 502, as the case may be), the spouse and children of a deceased member may be unjustly deprived of a member's share or interest in property with the society on the death of the member because H the member after marriage, either forgot to include, or renominate, or procrastinated in renominating, or including the spouse or children to take the share or interest, or the member otherwise failed to revoke the nomination made before marriage. It is, however, for Parliament to change the law if Parliament deems the circumstances justify such change. As the law stands, I have to agree with all counsel for the defendants that the law I is not in the plaintiff's favour. The application is dismissed with costs.

Application dismissed.

Reported by Isabel Liong